

1 JUDGE STEINBERG: Or was at the time.

2 WITNESS: -- was at the time of the term "probably
3 referred by employees"?

4 MR. HONIG: Yes.

5 WITNESS: As I recall, the FCC's 1992 letter that we
6 responded to in December in connection with which Dennis
7 Stortz prepared this asked for a listing of employees that had
8 been hired at the stations as a result of referrals by station
9 staff or staff at the International Headquarters of The
10 Lutheran Church. So, my understanding of this listing is --
11 my understanding is that this listing was created by Dennis in
12 order to respond to that question and in order to provide
13 information as to which resumes came to be on file at the
14 stations as a result of referrals by station staff or staff at
15 the headquarters.

16 MR. HONIG: Okay. But if you would now look at Mass
17 Media Bureau Exhibit 14.

18 JUDGE STEINBERG: Okay. That's in, in -- do you
19 have that --

20 WITNESS: Mass Media Bureau -- no.

21 JUDGE STEINBERG: Okay. Ms. Cranberg doesn't have
22 the Bureau exhibits in front of her.

23 MS. SCHMELTZER: Is there a particular page you
24 would like to refer her to?

25 MR. HONIG: The whole thing, but it's a simple

1 question. I'd like you to look at Mass Media Bureau Exhibit
2 14. Isn't it correct that the tabular information provided,
3 it's actually on pages 7 through 9 of NAACP Exhibit 59, did
4 not find its way into Mass Media Bureau 14.

5 MS. SCHMELTZER: I'm going to object, Your Honor.

6 MR. HONIG: Counsel --

7 MS. SCHMELTZER: I'm not sure what we're talking
8 about here.

9 MR. HONIG: Well --

10 MS. SCHMELTZER: If the Commission felt that we
11 didn't answer their questions, I would assume the Commission
12 would have asked us another question.

13 JUDGE STEINBERG: Well, what I'm going to do is --
14 the question was the material -- in NAACP 59 the material
15 concerning full-time hires and part-time hires on pages 7, 8,
16 and 9 is not in Bureau Exhibit 14.

17 MR. HONIG: That's right.

18 JUDGE STEINBERG: Okay. Documents speak for them-
19 selves. They're --

20 MS. SCHMELTZER: That's --

21 MR. HONIG: Right.

22 JUDGE STEINBERG: -- there or they're not.

23 MR. HONIG: Okay.

24 MS. SCHMELTZER: But Your Honor --

25 MR. HONIG: Then I, then I don't have other ques-

1 tions on NAACP 59 and if I moved it -- I have not moved it. I
2 would like to move it into evidence.

3 MS. SCHMELTZER: I object, Your Honor. First of
4 all, the person that would have had the best knowledge about
5 this exhibit is Dennis Stortz, and Dennis Stortz was not
6 cross-examined about this exhibit, although -- and neither was
7 Paul Devantier. Both of those people were here. They were
8 witnesses. It would be highly prejudicial to bring this in.
9 In addition to that, I don't think that there's any relevance.
10 There's no material misrepresentation. There's nothing that
11 impeaches anything.

12 JUDGE STEINBERG: Mrs. Laden?

13 MS. LADEN: I agree with Ms. Schmeltzer's comments,
14 Your Honor.

15 MR. HONIG: May I respond, Your Honor?

16 JUDGE STEINBERG: Briefly.

17 MR. HONIG: Your Honor, there has been argument,
18 which the Parties I think can argue in Findings, that there
19 was a material difference in two earlier phrases. This is
20 appropriate to come in through this witness because this
21 witness developed the changed wording in 1990, then received
22 information further explaining the changed wording afterward
23 from the same person who she had conferred with, then didn't
24 include any modification of, of this language in the document
25 which were -- was provided to the Commission before

1 designation for hearing. Your Honor, there's a misrepresen-
2 tation issue in this case and I don't know whether this is or
3 is not a material misrepresentation, but it certainly goes to
4 that issue. I would like to reserve the right to, to, to
5 address it. We haven't, as you know, determined where we come
6 out.

7 JUDGE STEINBERG: Okay. So, what you're basically
8 saying is in 1990 there was an Opposition to the Petition to
9 Deny.

10 MR. HONIG: Yes.

11 JUDGE STEINBERG: In 1992 Dennis Stortz prepared
12 notes that he sent to Ms. Cranberg in response to a specific
13 Commission inquiry.

14 MR. HONIG: Yes.

15 JUDGE STEINBERG: The notes contained information
16 that did not wind up in the Church's response to that inquiry.

17 MR. HONIG: Yes.

18 JUDGE STEINBERG: And that you may conclude from
19 that that there was a misrepresentation by the Church because
20 Ms. Cranberg, or whomever wrote the 1992 response to the
21 inquiry, left stuff out.

22 MR. HONIG: I don't want to go so far as --

23 JUDGE STEINBERG: I said may have.

24 MR. HONIG: May have. That, that's true.

25 JUDGE STEINBERG: Okay. Ms. Laden, did you state a

1 position?

2 MS. LADEN: Yes. I agreed with the Church's
3 position.

4 JUDGE STEINBERG: Okay. 59 is rejected.

5 (Whereupon, the document marked for
6 identification as NAACP Exhibit
7 No. 59 was rejected.)

8 MR. HONIG: Are you all right?

9 JUDGE STEINBERG: Pardon me?

10 MR. HONIG: Are you all right?

11 JUDGE STEINBERG: Oh, I'm fine. I'm just -- I
12 didn't take my allergy pill this morning. I should note for
13 the record that I take a non-drowsy allergy pill, which I'm
14 sure is evident from the transcript of this proceeding.

15 (Laughter.)

16 JUDGE STEINBERG: And then I limit it. Up till, up
17 until yesterday afternoon I limited myself to one cup of
18 coffee with caffeine per day. So, let the record reflect
19 that. You may want to -- Mr. Honig may want to use that
20 information in his exceptions.

21 MR. HONIG: No, I don't think so.

22 JUDGE STEINBERG: Let the record reflect I was
23 joking.

24 MR. HONIG: If -- since you have still before you, I
25 hope, Bureau Exhibit 14, let me ask you a couple additional

1 questions about that exhibit. First, would you turn to the
2 numbered -- the exhibit number page --

3 JUDGE STEINBERG: The handwritten number on the
4 bottom.

5 MR. HONIG: The handwritten number page 14.

6 WITNESS: Okay.

7 MR. HONIG: Now, I'm, I'm correct you drafted Bureau
8 Exhibit 14?

9 WITNESS: That's right, based on information sup-
10 plied to me by station staff.

11 MR. HONIG: Okay. And you'll see in the bottom
12 paragraph that carries over, the second sentence, the state-
13 ment, "Nearly one-third of KFUE-FM's advertising clients are
14 business entities with a direct relation to classical music."
15 Now, what is the -- what was the basis for that statement?

16 WITNESS: It was based on information that Dennis
17 Stortz had supplied to me identifying the advertisers at the
18 station who have some connection with classical music and what
19 percentage of the overall advertisers they comprise.

20 MR. HONIG: Is that written or oral information that
21 Mr. Stortz provided to you?

22 WITNESS: I honestly can't remember if he sent me a
23 written list of the advertisers that I -- that are listed here
24 at footnote 1 on page 15 of this exhibit --

25 MR. HONIG: Now, footnote --

1 WITNESS: -- or whether he provided me with the
2 information over the telephone.

3 MR. HONIG: Now, footnote 1 --

4 JUDGE STEINBERG: Did you finish your answer? It,
5 it sounded like you wanted to add something. If you finished,
6 you finished.

7 WITNESS: I, I guess I finished.

8 MR. HONIG: Now, footnote 1 -- no, strike that. Did
9 Mr. Stortz tell you how many advertising clients KFUE-FM had?

10 MS. SCHMELTZER: Objection. Relevance.

11 JUDGE STEINBERG: Foundation?

12 MR. HONIG: The statement one-third appears --

13 JUDGE STEINBERG: No, I mean is it -- is this a
14 foundation question?

15 MR. HONIG: Yes.

16 JUDGE STEINBERG: Overruled.

17 WITNESS: Could you repeat the question?

18 BY MR. HONIG:

19 Q The question was did Mr. Stortz tell you how many
20 advertising clients KFUE-FM had?

21 A I can't remember whether he gave me the total number
22 or not.

23 Q Did he give you --

24 A I, I am uncertain that the figure one-third would
25 have come from Dennis as opposed to his, his telling me what

1 the total number was and then telling me who the advertisers
2 were with the link to classical music and then my doing a
3 calculation as to what percentage that was.

4 Q Did he tell you how many KFUP-FM advertising clients
5 had, in his opinion, a direct relation to classical music?

6 A Again, I can't recall whether he did or not.

7 Q Did you ask him for written documentation to back up
8 this assertion?

9 A The assertion that one-third of the advertising --

10 Q Yes.

11 A -- clients have a link to classical music?

12 Q Yes.

13 A I don't believe that I did.

14 Q And are you aware of any written documentation from
15 any source to back that up?

16 A I'm not aware of any, but I don't believe I made the
17 inquiry.

18 Q Now, if you would look at footnote 1 on hand-
19 numbered page 15? What was the basis for the information in
20 this footnote?

21 MS. SCHMELTZER: Your Honor, I'm going to object
22 because --

23 MR. HONIG: What, what was it for?

24 MS. SCHMELTZER: -- I don't understand where we're
25 going with this line of inquiry. How is this related to the

1 | issues in this proceeding?

2 | JUDGE STEINBERG: I understand. Overruled. But I
3 | think the question's been answered.

4 | BY MR. HONIG:

5 | Q Well, let me, let me ask, ask a different question
6 | then because it's, it's been answered. Did Mr. Stortz identi-
7 | fy to you the specific entities -- name to you the specific
8 | entities that are mentioned in this footnote?

9 | A Yes, he did.

10 | Q Okay. Did he name others besides these?

11 | A I -- I'm afraid I don't remember. I don't recall
12 | whether he named others and just in the interests of keeping
13 | this short I included some or whether this was the complete
14 | listing. I do note that in the footnote I characterized this
15 | listing as a partial listing, but, again, I don't know if
16 | Dennis gave me the entire listing and I picked and chose or
17 | not.

18 | Q Did he tell you that the listing was partial?

19 | A I don't recall. Either told me the listing was
20 | partial or he gave me the entire list and I only made certain
21 | selections from the list so that I characterized the footnote
22 | as being only a partial listing.

23 | Q Do you have an understanding as to whether this
24 | partial listing comprises but a small portion of these clients
25 | with a link to classical music or the majority of them?

1 A I don't have any understanding now and I don't
2 recall if I had any understanding at the time that I prepared
3 those as to what part of the overall world of classical-music-
4 related clients this is.

5 Q Do you remember ever asking Mr. Stortz for a com-
6 plete list?

7 MS. SCHMELTZER: Your Honor, asked and answered.

8 MR. HONIG: No. That was a different question.

9 JUDGE STEINBERG: Yeah. Overruled. And let's wrap
10 this up.

11 MR. HONIG: Yes.

12 JUDGE STEINBERG: I think we've milked it for all
13 it's worth.

14 MR. HONIG: Okay.

15 JUDGE STEINBERG: But you can answer that question.

16 WITNESS: I don't remember if I asked Dennis for the
17 complete list or not.

18 MR. HONIG: Now, if you would turn to -- hold on
19 just one second. If you would turn to numbered page 44 and
20 look at the first paragraph on that page and read that to
21 yourself, please?

22 WITNESS: Okay.

23 MR. HONIG: Okay. Now, would you characterize this
24 -- the, the statements made in that paragraph as statements of
25 fact, statements of law, or both?

1 MS. SCHMELTZER: Objection, Your Honor. I don't
2 think it's relevant how Ms. Cranberg characterizes --

3 MR. HONIG: This is foundation.

4 JUDGE STEINBERG: Overruled.

5 WITNESS: I guess I would characterize it as a
6 combination of both.

7 MR. HONIG: Now, speaking --

8 JUDGE STEINBERG: Combination of?

9 WITNESS: Of law and fact.

10 MR. HONIG: Now, I'd like you to restrict yourself
11 in your answers to questions I'm going to ask you about this
12 paragraph to just the statements of -- arguments of law. Now,
13 were those arguments of law in this paragraph arguments which
14 the Church asked you to make and you then made them or were
15 they arguments which you recommended to the Church be made and
16 they agreed that you should make them for the Church?

17 JUDGE STEINBERG: There's another alternative and --

18 MR. HONIG: They remained -- through --

19 JUDGE STEINBERG: No. I mean -- never mind. Forget
20 my comment.

21 MR. HONIG: Or some other way.

22 WITNESS: Would you mind repeating the two choices
23 you posed?

24 MR. HONIG: The, the short way to put it is was this
25 your idea or, or was it the Church's idea or someone else?

1 WITNESS: The legal arguments?

2 MR. HONIG: Pardon me?

3 WITNESS: You're asking about the legal arguments
4 in --

5 MR. HONIG: Yes.

6 WITNESS: -- this paragraph? The first, the first
7 statement here that I would characterize as a legal argument
8 is the point that those positions at KFUD requiring a Lutheran
9 background were exempt from EEO requirements under the ings
10 Garden doctrine. I don't remember for certain. This document
11 came into being as a result of a lot of give and take and
12 conversations and I can't remember who first raised the point
13 about positions requiring a religious knowledge or background
14 being treated differently under the law.

15 MR. HONIG: I, I may not have asked my question very
16 carefully. I, I wasn't speaking of the arguments in, in the
17 sense in which they found their way into this document, but
18 rather the arguments that had been made throughout the period
19 February 1990 through this document in a number of pleadings
20 of which -- and this paragraph was just picked because it
21 encapsulates -- seems to encapsulate all of them in a coherent
22 space.

23 MS. SCHMELTZER: If that's a question I object,
24 because --

25 MR. HONIG: No, it's an explanation to assist the

1 witness.

2 MS. SCHMELTZER: Well, I don't think it assists the
3 witness because --

4 JUDGE STEINBERG: Well, let, let me just say you --
5 your question was addressed specifically to this paragraph and
6 Ms. Cranberg attempted to answer it. Now, if you want to ask
7 another question and, say, and preface it with: during --
8 from early 1990 when you started working on these matters
9 through December of 1992 what generally did you do --

10 MR. HONIG: That's my intention. During that period
11 when this argument was made, was it made --

12 JUDGE STEINBERG: When you say this argument --

13 MR. HONIG: -- relating --

14 JUDGE STEINBERG: Lots and lots of arguments were
15 made.

16 MR. HONIG: Okay. The one, the one about which
17 we're testifying, that -- because the --

18 JUDGE STEINBERG: Which is what, what?

19 MR. HONIG: That, that some of the positions at
20 KFUE-FM required a Lutheran background and were thus exempt
21 from EEO requirements. Was -- did that argument as it was
22 used during the time February '90 through December '92 origi-
23 nate with the church or with Arnold & Porter?

24 WITNESS: My memory is that the station was aware of
25 the Kings Garden doctrine and considered that its hiring

1 criteria with respect to positions that required a Lutheran
2 background or knowledge was consistent with the Kings Garden
3 doctrine. And, so, in my discussions with the station in
4 developing a response to the various pleadings made by the
5 NAACP and letters of inquiry from the Commission, both Arnold
6 & Porter and station staff talked together about that argument
7 and, and attempted to elucidate for the Commission which
8 positions required Lutheran background or training --

9 MR. HONIG: Do you remember --

10 WITNESS: -- and which did not.

11 MR. HONIG: -- which came first, the Church's -- or
12 KFUP's awareness of the Kings Garden doctrine or its implemen-
13 tation of the policy relating to Lutheran background require-
14 ments?

15 MS. SCHMELTZER: I'm sorry. I don't understand that
16 question.

17 JUDGE STEINBERG: Does the witness understand it?

18 WITNESS: Are you asking me whether the station made
19 hiring decisions based on Lutheran training existence or lack
20 of Lutheran background or training before the station was
21 aware of the Kings Garden case?

22 MR. HONIG: Well, do you, do you know whether these,
23 these -- this policy relating to Lutheran background was
24 adopted because of, of the, the, the Church's awareness of
25 Kings Garden or did Kings -- or had -- did the Church already

1 have these policies when it, when it, when it became aware of
2 the Kings Garden?

3 WITNESS: I'm -- I, I don't know. I really don't
4 know.

5 MR. HONIG: Now, there came a time when you, you
6 wrote a letter to Dennis Stortz explaining Kings Garden,
7 didn't, didn't there? That was in 1987, isn't that right?

8 WITNESS: I think I wrote a letter to Tom Lauher at
9 KFUE, who was the station manager at that time. I think the
10 letter was written in 19-- early '89, I believe.

11 MR. HONIG: It's in, it's in one of the attachments
12 to something. I think it's in a Bureau -- in another Bureau
13 exhibit, a later one. Let's find it.

14 JUDGE STEINBERG: Probably in -- no, it's not -- I'm
15 not going to --

16 MR. HONIG: Might have been one of mine.

17 JUDGE STEINBERG: Oh, that's -- yeah. I had a
18 question too.

19 MS. SCHMELTZER: I believe it's Attachment 6 to Ms.
20 Cranberg's Testimony.

21 MR. HONIG: Oh. That's easy.

22 JUDGE STEINBERG: Yep.

23 MR. HONIG: Thank you. April 4, 1989. Now, does
24 that -- you, you see, you see Attachment 6 to your Testimony?

25 WITNESS: Yes, I do.

1 MR. HONIG: Does that refresh your memory of when
2 you understood the, the Church to have been aware of the Kings
3 Garden document?

4 JUDGE STEINBERG: Well, I think you phrased it
5 incorrectly. Does that refresh your memory as -- not when the
6 Church became aware -- but she can't testify as to when the
7 Church became aware of it. She can only testify as to when
8 she informed the Church about it. The Church may have been
9 aware of it before then. It may not.

10 BY MR. HONIG:

11 Q I guess I should ask that. Do you know whether the
12 Church was aware of the Kings Garden doctrine before you wrote
13 this April 4, 1989, letter to Tom Lauher?

14 A I'm afraid I really don't know. I can't remember
15 enough about what Tom Lauher said to me in our conversations
16 to be able to respond to your question as to whether the
17 Church knew anything or a lot or a little about Kings Garden
18 before I read this letter.

19 Q Kings Garden was issued in May 1974. Isn't that
20 right? Page 7 of your tab 6 to your Testimony.

21 A The Court of Appeals decision -- that's right.

22 Q Excuse me. I'm sorry. Now, do you know whether the
23 policy that KFUD-AM had regarding Lutheran background for,
24 for, for positions predated the Kings Garden decision itself?

25 A I have no idea. I didn't -- I wasn't even a lawyer

1 when Kings Garden came out. I had no dealings with the
2 Church. I have no idea.

3 Q Okay. Let's turn to the next statement of law in
4 this paragraph on page -- numbered page 42 of Bureau
5 Exhibit 14.

6 A I'm sorry, David. What page?

7 Q Okay. And the, the --

8 JUDGE STEINBERG: Okay. It's handwritten page 44 of
9 Bureau Exhibit 14.

10 WITNESS: Okay.

11 JUDGE STEINBERG: In the first paragraph.

12 BY MR. HONIG:

13 Q Maybe I ought to take each, each argument in turn.
14 The next argument seems to be "Financial considerations con-
15 strained KFUD to afford a preference for a very small number
16 of employees affiliated with the Concordia Seminary. Do you
17 construe that to be an argument of fact or law or mixed?

18 A I guess mixed. I'm not certain. I guess mixed. I
19 -- there are some factual assertions there and I guess implic-
20 it in, in the phrase is an argument that because of these
21 financial constraints some leeway should be read into the EEO
22 requirements.

23 Q Now, again, between the period February 1990 and
24 December 1992 did this argument originate with Church or with
25 Arnold & Porter?

1 A The factual information that's set forth here and in
2 other pleadings concerning the Church's employment policies --

3 Q The legal argument only. Not the --

4 MS. SCHMELTZER: You asked about the facts, counsel.

5 BY MR. HONIG:

6 Q I'm sorry. I, I made a mistake. Did the legal
7 argument embedded in this statement originate with the Church
8 or with Arnold & Porter?

9 A I, I have a little trouble responding because I am
10 not even clear in my mind that it is a legal argument. We
11 presented the facts in order to assist the Commission in
12 understanding generally what the station's employment practic-
13 es were and what the constraints were and so on. So, it's a
14 little difficult for me to answer because I, I'm not --

15 Q And to, to the extent that --

16 A -- sure that this is a clear-cut legal argument at
17 all.

18 Q To the extent that it, it is -- it's mixed. And to
19 the extent that it's a legal argument, did that legal compo-
20 nent of the argument originate with the Church or with Arnold
21 & Porter?

22 A I, I can't remember. Again, this document evolved
23 as a result of the conversations back and forth and I am not
24 at all sure that one side or another struck upon a legal
25 argument per se in connection with this.

1 Q Sure. The next argument seems to be "KFUO urges the
2 (sic) -- also urges the Commission to assess its performance
3 in light of the fact that KFUO-AM and KFUO-FM are very small
4 stations." That's also mixed fact and law, isn't it?

5 A I suppose so. I suppose there's an implicit legal
6 argument in this case. This, this paragraph really was a --
7 sort of a summary paragraph, so --

8 Q That's right.

9 A -- this is certainly not the extent of the legal
10 argument.

11 Q That's right. And the legal argument embedded
12 within that statement, did that originate with the Church or
13 Arnold & Porter? Again we're talking about the same time
14 period.

15 A I have a vague memory that that originated with me,
16 that I was struck by how small the stations were and how
17 arguably statistically meaningless an assessment of the
18 station's performance might be in light of how small, how
19 small the stations were.

20 Q And is there any doubt in your mind that the Church
21 adopted or endorsed or ratified that document?

22 MS. SCHMELTZER: Objection. She can't testify to
23 whether the Commission endorsed or ratified her argument --

24 MR. HONIG: Not the Commission --

25 JUDGE STEINBERG: The Church.

1 MR. HONIG: -- the Church.

2 MS. SCHMELTZER: Oh. I'm sorry.

3 JUDGE STEINBERG: And Mrs. Schmeltzer, she misspoke.

4 Do you want to restate your objection?

5 MS. SCHMELTZER: I guess I'd have to hear the
6 question again.

7 JUDGE STEINBERG: Okay. The, the objection was --
8 the question was did the Church endorse this argument.

9 MR. HONIG: Yes.

10 JUDGE STEINBERG: And the objection was this witness
11 can't --

12 MS. SCHMELTZER: Speak for the Church. That that
13 question --

14 JUDGE STEINBERG: I'll sustain the objection. You
15 can -- document was filed.

16 MR. HONIG: That, that's good enough for me. I'm
17 just trying to be sure. Okay.

18 MR. HONIG: The next argument seems to be that --
19 again, this is part of the sentence "KFUO also urges the
20 Commission to..." The next phrase is to apparently consider
21 that "that KFUO employed greater numbers of minorities than
22 were reflected in its annual employment reports." Again,
23 that's mixed fact and law, is it not?

24 WITNESS: That's primarily fact, I would say.

25 MR. HONIG: To the extent that it's a legal argu-

1 ment, did that originate with the Church or with Arnold &
2 Porter?

3 WITNESS: My vague memory is that I asked the
4 station whether over the course of the license term the sta-
5 tions had had minority employees that weren't reflected in any
6 of the annual employment reports. So, that the question
7 originated with me, the information was supplied to the sta-
8 tion, and based on that information I set, set that out to the
9 Commission.

10 JUDGE STEINBERG: Well, that was a long hashed-out
11 numbers, statistics, names in the Opposition.

12 MR. HONIG: Okay. And the last argument appears to
13 be that KFUD urges the Commission to consider "...that the
14 labor force availability figures relied upon by the Commission
15 should take account of the fact that many of the positions at
16 KFUD require very specialized skills." Again, that's mixed
17 fact and law, is it not?

18 WITNESS: I would say so.

19 MR. HONIG: And to the extent that it's law did that
20 originate with KFUD or with Arnold & Porter?

21 WITNESS: My memory is that when the NAACP's
22 Petition to Deny was filed I asked Dennis Stortz whether there
23 were any positions at the station that required specialized
24 skills or background, and Dennis responded in the affirmative.
25 And on the basis of the information he supplied me, that I

1 argued to the Commission in numerous of these pleadings that
2 it would make sense for the Commission to consider alternative
3 availability figures for certain positions that required very
4 specialized skills.

5 MR. HONIG: Okay. Now --

6 JUDGE STEINBERG: Let me -- while we're on alterna-
7 tive availability figures, I think -- well, I, I think I know
8 what you're talking about and, and I want to find it in the
9 Opposition and --

10 (Pause.)

11 JUDGE STEINBERG: If anybody could help me where
12 those, where those figures are in the Opposition, I'll --

13 MS. SCHMELTZER: I think it's pages 9 through 11 are
14 what you're referring to.

15 JUDGE STEINBERG: Okay.

16 MR. HONIG: Yes.

17 MS. SCHMELTZER: It's Mr. Stortz's Attachment 7.

18 JUDGE STEINBERG: Yeah.

19 MS. SCHMELTZER: Oh, page 14 of that attachment,
20 actually.

21 EXAMINATION

22 BY JUDGE STEINBERG:

23 Q Yeah. See that circle on -- okay. If you -- the,
24 the beginning, "Clearly nearly all of KFUD's employees..."
25 That paragraph. If you'd just review that and the next, and

1 the next -- through the -- through section two on page 11 --
2 or all two sections on page 11.

3 A Okay.

4 Q Okay. And I just -- a very simple question, is
5 whose idea was it to include these arguments in the
6 Opposition?

7 A It was my idea. Arnold & Porter had made similar
8 arguments in other cases in the past, so I guess it's -- I
9 should say it was Arnold & Porter's idea.

10 Q Basically, what was your intention in making these
11 arguments?

12 A The arguments were part of an overall discussion of
13 a number of factors that I felt the Commission should take
14 into account in assessing the station's employment profile,
15 including the small number of employees overall at the sta-
16 tions, the fact that the stations had a greater number of
17 minority employees over the license period than were reflected
18 in the annual employment reports, and the fact that a signifi-
19 cant number of positions required very specialized skills such
20 that relying on overall labor forces -- didn't seem to be a
21 very precise way of measuring the station's performance. That
22 was my purpose in, in making the argument.

23 Q Okay. You -- so, in your opinion your -- and
24 clearly this is your opinion, your state of mind at the time,
25 was that the material that we're talking about and that you've

1 reviewed was legal argument which was designed to persuade the
2 Commission not to rely on overall -- what's the word I'm
3 looking for? -- demographic data in the market but just look
4 at other demographic --

5 MR. ZARAGOZA: Labor force data.

6 JUDGE STEINBERG: Labor force data. Okay.

7 WITNESS: That's right. Yes. It was clearly a, a
8 legal argument, intended to be.

9 JUDGE STEINBERG: Okay.

10 CROSS-EXAMINATION

11 BY MR. HONIG:

12 Q Now, while we're in that document, could you turn to
13 -- it's actually page 17, which is page 12 of the text
14 pleadings. It's page 17 of tab 7 of Church Exhibit 4.

15 There in, in the top partial paragraph you'll see
16 the sentence, "When a given job vacancy occurs KFUO typically
17 has available to it some 20 resumes on file for persons with
18 the specific qualifications KFUO seeks." What was the source
19 of that factual statement or the -- without agreeing that it
20 is a fact, the nature of a fact?

21 A I received, so far as I can recall, virtually all of
22 the facts -- factual information included in this pleading was
23 provided to me by Dennis Stortz. So, I'm, I'm quite certain
24 -- I don't recall specifically Dennis telling me this, but I,
25 I'm quite certain that I got this information from Dennis

1 Stortz.

2 Q Now, then at the bottom of that same page you will
3 see the sentences, "Finally, as noted, KFUE has experienced a
4 tremendous degree of management turnover during its license
5 period. The lack of consistent leadership has increased the
6 difficulties in maintaining a consistent recruitment program."
7 What was your understanding of the word "tremendous" as used
8 here?

9 MS. SCHMELTZER: Your Honor, Mr. Stortz has been
10 examined on this question and, you know, I don't know that
11 this witness is the appropriate person to -- and I don't think
12 that asking her about her understanding of the word "tremen-
13 dous" really advances the ball here.

14 JUDGE STEINBERG: I'll overrule the objection. We
15 have the author of the document. It's fair to ask what was
16 meant by a particular word. But there, if my memory serves
17 me, is something else in here which, I don't want to let the
18 cat out of the bag, which -- something else in this document
19 which could assist the witness in answering. I mean, there's
20 specific numbers in there. And if you want to point that out,
21 Mr. Honig, you're free to do so, but I don't -- I mean, if the
22 witness wants to go looking for it she's free to do that.

23 MR. HONIG: Well, I don't mind if the witness goes
24 looking for it. This was really intended as foundation.

25 WITNESS: I do recall that in our December '92